

MAF

SUPERIOR COURT OF NEW JERSEY  
PASSAIC VICINAGE

CHAMBERS OF  
DONALD J. VOLKERT, JR.  
ASSIGNMENT JUDGE



COURTHOUSE  
77 Hamilton St.  
Paterson, New Jersey 07505-2018  
(973) 247-8139  
FAX (973) 247-8409

October 22, 2009

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Richard J. Hughes Justice Complex  
PO Box 037  
Trenton, New Jersey 08625

Civil Practice Division

OCT 27 2009

RECEIVED

Dear Judge Grant:

This letter will serve as an application pursuant to Rule 4:38A and Directive # 7-09 (Mass Tort Guidelines and Criteria for Designation).

To date, there are 39 cases filed in the Superior Court of New Jersey, with 13 pending in the Passaic vicinage against Bayer Healthcare Pharmaceuticals, Inc., the manufacturer of the contraceptives Yaz and Yasmin and against Barr Pharmaceuticals, the manufacturer of Ocella, the generic equivalent of Yaz and Yazmin. One of the 13 cases pending in Passaic was filed on behalf of ten out-of-state women who hail from various cities in Tennessee and Texas. All of the complaints allege that the women suffered from deep vein thrombosis, pulmonary embolism and other damages as a result of taking these prescription contraceptives. The suit asserts that "defendants should have known that Yaz, Yasmin and *Ocella* created a higher risk of pulmonary embolism than other oral contraceptives on the market."

According to the law suits, *Yaz*, *Yasmin* and the generic *Ocella* contain estrogen and progestin, steroidal components that work together to suppress ovulation and prevent pregnancy. These contraceptives are different from other combined hormonal birth control pills in that they contain Drospirenone, a progestin that is unlike other

progesterone available in the United States and was never marketed in the U.S. prior to its use in *Yaz*, *Yasmin* and *Ocella*.

Attorney Peter E. Goss of Wendt Goss PC, a Missouri law firm, indicated that he will be filing additional law suits against Bayer, which is headquartered in Wayne, New Jersey. He stated that the total number of plaintiffs could reach one thousand. A representative of Seeger Weiss, a firm which was involved in the Vioxx cases, has indicated that his firm will also be filing 20 to 30 additional cases shortly in the New Jersey Superior Court. My understanding is that the other filed cases are pending in Middlesex and Atlantic counties.

While I am confident that the Civil Division Judges here in the Passaic Vicinage are capable of handling these cases, the case management and potential trial of this particular litigation would place a fairly substantial strain on our already limited resources.

Besides the potential for many additional filings, other indicia of a mass tort are present, including:

- geographical dispersement of parties;
- consolidation of these cases pursuant to Section 1407 of the U.S. Code in the Federal courts under MDL No. 1200 and assignment of them to United States District Court Judge David R. Herndon in the Southern District of Illinois, thus requiring single point of contact with a New Jersey judge;
- advantage of coordinated discovery;
- risk of unnecessary redundancy and inconsistent rulings by different judges, resulting in undue delay and expense;
- high degree of remoteness between the court and the decision makers;
- existence of common issues of law and fact, as found by the MDL Panel; and
- increase in efficiency insofar as a single judge would need only rule once on pervasive issues.

DONALD J. VOLKERT, JR., A.J.S.C.

I understand that this matter will require publication of a Notice to the Bar seeking comments and objections, with the matter thereafter being placed before the Supreme Court.

Thank you for your consideration.

Very truly yours  
  
Donald J. Volkert, Jr., A.J.S.C.

c: Thomas F. Brogan, P.J.Cv.  
Jane Castner, Assistant Director  
Michelle Perone, Chief Civil Court Programs  
Dominic Palumbo, C.D.M.